

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4761 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

RASULKHA NAMADKHA PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. L.R. Pujari, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 10-4-96 passed by the District Magistrate, Bharuch detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 19-4-96 and since then the petitioner is detained at Porbandar Special Prison, Porbandar.

2. The present Special Civil Application was filed on 8-7-96 and on 9-7-96 Rule returnable on 12-8-96 was issued. So far neither any reply has been filed by the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that 3 criminal cases were registered against the petitioner at Police Station, Palej under the Bombay Prohibition Act, out of which one is pending trial in the Court and two were pending police investigation at the time when the detention order was passed. Quantity of liquor involved in these 3 matters range from 3 to 15 liters worth Rs.60/-, Rs.300/- and Rs.300/- respectively. After noticing the allegations in these criminal cases, the detaining authority has noticed that the petitioner was a bootlegger and was engaged in the business of unauthorised liquor and if his activities were opposed he was beating and threatening the persons in the area. He has referred to the statements made by 4 witnesses on 21-2-96, 22-2-96, 23-2-96 and 25-2-96. These witnesses have stated that the petitioner was engaged in the business of sale of the unauthorised country liquor and he was a head strong person. First witness has also stated that about 15 days back while the witness was going for the labour work the petitioner came to the witness and told him that he has not to go to any other place but he has to come with him for sale of the liquor. The witness replied that he was not prepared to do the job of selling the liquor, the petitioner, therefore, got enraged and asked him that he will have to do the business as asked by him otherwise he will be killed and gave a stick blow to the witness, the witness cried for help, but nobody came to his rescue because of petitioner's fear. The second witness has also stated that the petitioner was a head strong person and was keeping the persons on hire. It has been stated that the petitioner came to the house of this witness about 10 days back alongwith other outsiders, abused the witness and asked the witness to accompany him to demolish a shop, the witness stated that he was not feeling well and he would not go for demolition of the shop and thereupon this witness was beaten. The other witnesses have also made similar allegations against the petitioner and the detaining authority has mentioned that the petitioner was a bootlegger and was engaged in the anti social activities and had become a problem for the public order and the proceedings of externment etc. were not be sufficient to prevent the petitioner from continuing his anti social activities and accordingly the detention

order was passed against the petitioner.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it may constitute a case of breach of law and order.

5. Learned A.G.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered similar allegations in Special Civil Application No.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations, such as levelled in the present case, do not constitute the case of breach of public order and at the most it constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed apply with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 10-4-96 passed by District Magistrate, Bharuch is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.